IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1047 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PREMSHANKAR PRABASHANKAR JOSHI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 1047 of 2000

MS. ARCHANA AMIN FOR MR MURALI N DEVNANI for Petitioner

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/09/2001

ORAL JUDGEMENT

1. In this petition which is filed under Article 226 of the Constitution, petitioner has challenged the order dated March 13, 2000 passed by the Appellate Authority, that is, Deputy Secretary, Home Department, by which

petitioner has been externed for a period of two years from Porbandar District and for remaining four districts, i.e., Junagadh, Jamnagar, Rajkot Rural and Rajkot City, the petitioner is directed to execute personal bond of RS.25,000/- with two sureties of the like amount for keeping good behaviour and to refrain from indulging into anti social activities.

2. A show cause notice dated May 27, 1998 was issued under Section 59 of the Bombay Police Act ('the Act' for short) wherein allegations are made that 10 cases are registered against the petitioner for the offences punishable under the Indian Penal Code and Bombay Prohibition Act. Therefore the externing authority considered the activities of the petitioner as detrimental to the maintenance of public order and by issuing show cause notice the petitioner was called upon to how cause why he should not be externed for a period of two years from the Districts of Porbandar, Junagadh, Jamnagar, Rajkot City and Rajkot Rural and after considering the material on record, the externing authority passed an order dated November 29, 1999 in exercise of powers conferred in him under Section 56 (a) and (b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

3. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred appeal before the appellate authority and the appellate authority vide order dated March 13, 2000 allowed the appeal in part and modified the order of externment passed by the externing authority by externing the petitioner from Porbandar District only for a period of two years and ordering him to give personal bond of Rs.25,000/- with two sureties of the like amount for keeping good behaviour and peace so far as other four districts are concerned and this order has given rise to the present petition.

4. Ms. Archna Amin, learned advocate for the petitioner, has raised several contentions and tried to convince this Court that the order of externment suffers from vices of non-application of mind. Besides this, she also raised contention that the order was passed after a period of one year and six months from the date of issuance of the show cause notice. Therefore, according to her, there is abnormal delay in passing the impugned order which has not been explained by the authority and on the ground of delay itself the order of externment is vitiated. She has also placed reliance on the judgment of this Court in the case of Sitaben M. Thakore v. Dy.

Commissioner of Police, 1997 Cr.L.R. (Guj.) 139 and urged to quash and set aside the orders impugned in the petition by which the petitioner is externed from Porbandar District for a period of two years and ordering him to give personal bond for Rs.25,000/- and to give two sureties of the like amount for keeping good behaviour with respect to other four districts wherefrom he is externed by the externing authority.

5. Mr. K.T. Dave, learned APP opposed this petition and contended that the petitioner's activities are detrimental to the society at large. He is involved in ten criminal cases and therefore the detaining authority has rightly passed the order of externment externing the petitioner for a period of two years. However, the appellate authority has externed the petitioner only from Porbandar District and for remaining four districts the petitioner was directed to give personal bond of Rs.25,000/- and two sureties of like amount. Therefore, the order passed by the appellate authority cannot be leniently disturbed in a petition filed under Article 226 of the Constitution. Lastly he urged that the matter may be remanded to the externing authority for de-novo inquiry in view of the fact that the petitioner himself was responsible for causing the delay and as a result of the petitioner's non-cooperation the detaining authority could not record the order in time and therefore ex-parte order was required to be passed.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also gone through the averments made in the petition and also perused the documents attached to the petition and also considered the orders passed by the externing authority and the appellate authority. I have also considered the judgment cited at the bar by the learned advocate for the petitioner.

7. It is true that against the petitioner ten cases are registered for the offences punishable under the IPC and Prohibition Act. The externing authority has issued show cause notice on May 25, 1998 and thereafter order came to be passed on November 29, 1999 after a period of one year and six months. The detaining authority could not record the order earlier and ex-parte order came to be passed because the petitioner did not remain present and did not cooperate with the proceedings. However, one fact cannot be ignored that nobody has prevented the externing authority from passing the order immediately after initiation of the proceedings. If the attitude of

the petitioner was not to cooperate the externing officer ought to have recorded the order immediately. When he has recorded the order externing the petitioner for two years after one year and six months of the issuance of the show cause notice, he could have recorded the order ex-parte well in time and there was no necessity for him to wait for one year and six months. Moreover, there is no affidavit in reply filed by the externing authority as to under what circumstances the order was passed after one year and six months. The appellate authority has allowed the appeal in part by deleting the externment from four district i.e., from Junagadh, Jamnagar, Rajkot Rural and Rajkot City and externed the petitioner from Porbandar district only. In Sitaben's case (supra) the externment order was passed on July 13, 1995 after issuance of show cause notice dated February 25, 1996 i.e., the order of externment was passed about one year and 4 months after issuance of show cause notice and this delay was caused without any sufficient reason. Therefore, this Court held that as the externing authority did not hold inquiry in time and on the ground of delay the proceeding is vitiated.

8. The ratio laid down by this Court in the aforesaid judgment is squarely applicable to the facts of the present case. In this case the externment order was passed after one year and six months after issuance of show cause notice and on the ground of delay itself the externment order is vitiated. On his ground alone the petition deserves to be allowed.

9. For the foregoing reasons, the petition is allowed. The order of externment passed by the externing authority at Annexure A and the order passed by the appellate authority at Annexure B both are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)